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Via Electronic Mail

Joe Calavita
Manager, Consumer Products Implementation Division
California Air Resources Board
Sacramento, CA 95812-0806
Joe.calavita@arb.ca.gov

Comments on California ARB's Draft Proposed Amendments to the Consumer Products Regulation

Dear Mr. Calavita:

In response to the California Air Resources Board (CARB) webinar on November 10, 2020, the Personal Care Products Council (PCPC)¹ is pleased to submit the following comments on the draft proposed amendments to the Consumer Products Regulation.

PCPC represents more than 600 member companies, ranging from large manufacturers and marketers to independent producers, which are involved in the manufacture and distribution of cosmetics, toiletries, fragrances, over-the-counter (OTC) drug products and ingredients in California and throughout the United States. PCPC members therefore have a strong interest in the scope and applicability of this regulation.

We appreciate the significant time and resources which CARB staff has made available to PCPC and its member companies as part of this comprehensive rulemaking. This dialogue has been helpful in accurately assessing the overall impact of various proposals on our products and allows the industry to identify and optimize solutions that meet the goals of CARB, the State of California, and the companies that provide personal care products.

INTRODUCTION

Since the inception of California's Consumer Product Regulations in 1989, PCPC and its members have continuously provided thoughtful feedback on CARB's rulemaking proposals to limit VOC emissions.

¹Based in Washington, D.C., the Council is the leading national trade association representing the global cosmetic and personal care products industry. Founded in 1894, the Council's more than 600 member companies manufacture, distribute, and supply the vast majority of finished personal care products marketed in the United States. As the makers of a diverse range of products that millions of consumers rely on every day, from sunscreens, toothpaste, and shampoo to moisturizer, lipstick, and fragrance, member companies are global leaders committed to product safety, quality, and innovation.

PCPC recently submitted formal comments² to CARB on August 28, 2020. These comments are still relevant and applicable to the current discussion and thus are incorporated by reference. The comments below are therefore focused on the topics (a) that were presented in the November 10, 2020 webinar and (b) whose changes were published for the November 10, 2020 Workshop and titled “Proposed Amendments to the Regulation for Reducing Emissions from Consumer Products”.

PCPC’s comments are submitted as an effort to help lead the discussion to a practical and effective regulatory framework that promotes sustainable innovation while making meaningful improvements to the protection of human health and the environment. Any significant change in regulation represents equally significant challenges to the formulating companies, as each new product must be evaluated for product integrity, stability, safety, financial viability, and ultimately consumer acceptability. PCPC member companies also must ensure that a new regulation does not lead to the substitution of potentially more toxic or environmentally damaging ingredients. PCPC respectfully submits the following comments for your consideration on the proposed amendments which impact the personal care categories.

Revised Proposal Summary (Appendix 1)

CARB’s proposed VOC standards for Hair Finishing Spray, No Rinse Shampoo [to be known as Dry Shampoo], Hair Shine, Temporary Hair Color, and Personal Fragrance Products remain unchanged from the July 28, 2020 proposal. PCPC appreciates that no further changes have been made to these VOC limits, as companies are already proceeding with modifications to current products that will need to meet these maximum VOC levels, especially for the January 1, 2023 implementation date.

Hair Care Products: Hair Finishing Spray, No Rinse Shampoo, Hair Shine, Temporary Hair Color

As no changes have been made in the specific proposals for these products, PCPC’s comments made on August 28, 2020 are still applicable. The proposed changes to definitions, including the renaming of the “No Rinse Shampoo” category to “Dry Shampoo,” are acceptable, but PCPC would like CARB to add to the definition of Dry Shampoo the ability of the product to make a “volumizing” claim in addition to a cleansing claim. The purpose of Dry Shampoo is to remove oil from the hair, which results in making the hair fuller in body and volume. As such, CARB should affirmatively recognize that dry shampoos can make this claim. Most dry shampoos currently on the market claim this benefit, which is also a significant benefit for traditional “wet” shampoos.

Personal Fragrance Products (PFP)

Extensive comments have been previously made regarding the VOC proposals for Personal Fragrance Products. The PFP category includes several types of consumer products ranging from deodorant body

² Thomas F. Myers to Joe Calavita, “Comments on California ARB’s Proposed Amendments to the Consumer Products Regulation”, August 28, 2020.

sprays to aftershave to fine fragrance products. Extensive comments, including discussions on the technical elements of these products, have been previously provided to CARB. These comments are still relevant to the discussion.

In its November 10, 2020 webinar, CARB presented an overview of the “Proposed Technology Assessment of the 2031 Standard.” All parties agree that such a Technology Assessment is necessary, since companies are uncertain as to how to lower VOC levels for a significant percentage of the PFP category from 70% to 50%.

CARB’s Technology Assessment would begin with a survey of PFPs with less than 10% fragrance on the California market in 2025, by which time products will have met the 2023 compliance date. As with previous product surveys, CARB’s proposed survey will require companies to submit (a) sales information, (b) formulation data, and (C) a copy of the label for each product. Additional information, not previously required in earlier surveys, include the disclosure of the VOC content of each fragrance and a written “Update” on each company’s efforts to meet the 50% VOC limit by the 2031 deadline. This update must include, as stated by CARB, “detailed information about the raw materials evaluated for use, MIR values for any VOC or LVP-VOC used or evaluated, the function of the raw material evaluated, hardware used in product reformulation, the testing protocols used, the results of the testing, and the cost of reformulation efforts.” All such documentation must be provided to CARB no later than March 31, 2026.

As an initial matter, it must be noted that companies will be reluctant to disclose information critical to potential patent applications; CARB’s process should not compromise a company’s trade secrets and/or ability to protect its proprietary information via the patent process. In addition, it is also necessary that CARB reconfirms that it will not disclose any information designated as company confidential, since it is requiring significant assessments of a company’s research capabilities be disclosed. Such information could provide recipients with details of another company’s intellectual property and technical capabilities. Further, CARB needs to definitively link the technology assessment to VOC limits. That is, CARB should include language in its “resolutions” which states that, if the 50% VOC level for Personal Fragrance Products proves to be technically infeasible by the January 1, 2031 deadline, CARB will increase the VOC limit to a higher level commensurate with the results of the technology assessment.

It is also not clear why CARB needs to know the VOC content of the fragrances used in each product. The additional reporting requirements in this survey, beyond that of previous surveys, could become an overwhelming amount of data to gather and report for many companies, especially smaller entities.

While companies have previously conducted surveys required by CARB, most recently in the years 2013-2015, PCPC requests that an *additional* 3 months be given in this case, with a new deadline of June 30, 2026, to accurately and precisely deliver the required information. Not every company’s fiscal year is a calendar year, which means that determining, processing, and reporting the appropriate information for 2025 could take longer than the proposed 3 months.

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Once the regulation is adopted, PCPC and its members pledge to engage with CARB in developing and executing the survey and technology assessments required.

Sunset of 2% Fragrance Exemption by 2031

In its earlier comments, PCPC requested that CARB withdraw the proposal to “sunset” the 2% fragrance exemption for Article 2 products only in 2027, in part because the VOC savings are minute and that unintended consequences could occur. It has also been pointed out that the elimination of the fragrance exemption amounts to a *de facto* reduction of the maximum VOC level in most Article 2 product categories.

On July 28, 2020 and again on November 10, 2020, CARB reaffirmed its goal of eliminating the exemption because it will “increase transparency and equity, facilitate enforcement, and help address public health concerns.” PCPC and its member companies continue to object to the inference that the fragrances in its products cause public health concerns, as all cosmetic products currently on the market need to have undergone a safety assessment *per* U.S. FDA regulations. Moreover, elimination of the exemption will not significantly increase transparency and equity since CARB has concluded that “over 85% of regulated category products and VOC mass” do not currently make use of the exemption. Nothing will change for these products.

PCPC appreciates that CARB is willing to consider retaining a portion of the exemption for certain categories. We request that CARB outline the basic criteria governing the approval of such exemptions.

PCPC has asked member companies who foresee difficulties in reformulating a product without the fragrance exemption to contact CARB directly to discuss potential solutions. While the relative impact of the elimination may be minimal for products with relatively high VOC maxima, products with low VOC standards, especially those with VOC maxima of $\leq 6\%$, may need to significantly reduce each product’s VOC content via reformulation efforts or eliminate much of the fragrance in the product. Such changes could impact product performance and consumer acceptance.

Innovative Product Exemption (IPE) Update: Aerosol Products Using Compressed Gas

PCPC strongly supports CARB’s proposal to increase regulatory flexibility for aerosol products which use compressed gas (air, nitrogen, etc.) via the use of IPEs.

The current proposal allows companies to replace the propellant HFC-152a, a greenhouse gas, with propellants such as air or nitrogen, without increasing the propensity of the product to form ground level ozone (Ozone Forming Potential, or OFP). At least 50% by volume of propellant ingredients must be one of the named compressed gases to qualify for the exemption: PCPC asks that CARB provide further clarification of how the 50% limitation is to be measured.

The use of Maximum Incremental Reactivity (MIR) to determine the actual ability of the product to form ozone is a key feature of this proposal. As PCPC has commented previously, using an MIR approach for selected categories could provide significant, innovative reductions in ozone forming potential as well as greenhouse gas generation.

There are some issues with the currently proposed amendment which need to be modified to allow companies to make full use of the exemption process and to deliver even greater reductions in the use of HFC-152a.

- (1) The IPE process relies on the use of a representative HFC-152a product. For some product categories, such as No Rinse Shampoo, there is currently no VOC standard: the use of HFC-152a is thus currently negligible. To launch a product with HFC-152a just to serve as a representative product is a waste of resources and will increase the amount of HFC in the atmosphere.
- (2) The requirement, as stated in the proposed amendment, that the non-propellant mass of the innovative product does not exceed the non-propellant mass of the representative HFC-152a product, must be changed to the modified statement subsequently provided by CARB: “the non-propellant mass of the representative HFC-152a product does not exceed the non-propellant mass of the innovative product.”
 - a. Without this change, delivering a product meeting the IPE criteria would be difficult if not impossible.
 - HFC also acts as a solvent for some product categories. By eliminating HFC from the product, additional solvents may be technically required to allow the product to function properly for consumers. The weight of the product could thus be increased to a level above that in the representative product.
- (3) While the proposed amendment focuses on the use of compressed gases in place of at least half of the HFC in the representative product, CARB should provide guidance as to how it impacts other aerosol technologies such as Bag on Valve technology, in which the propellant does not come in contact with the product in the can.
- (4) Using the MIR value (6.36) of terpinolene for all fragrance materials will unfairly penalize fragrances and thus lead to reductions of fragrances in the product. Based on fragrance industry information, CARB had previously concluded that the appropriate MIR value was 2.8 for most fragrances (4.04 for monoterpenes); this information was presented by CARB on September 20, 2019. These are the MIR values that should be used for fragrances.
- (5) There may be a number of ingredients, used by the personal care industry, which do not have MIR values determined. At a minimum, CARB should put priority on getting MIR’s for those ingredients

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in widespread use. In this manner they will open up the IPE process to allow even more innovative products to utilize it, to the benefit of the consumers of California.

- (6) A major issue with obtaining an IPE currently is the administrative burden for companies seeking to gain and maintain approval for their innovations. While CARB's proposal makes it easier to modify a product currently marketed under an approved IPE, there is still significant paperwork required to obtain and maintain an IPE. CARB should make the IPE process less burdensome and easier for companies to put products on the market which significantly benefit the state.
- (7) An issue with the current IPE process, including the currently proposed amendment, is the significant length of time it takes CARB to review and approve an IPE proposal. Companies may be reluctant to apply for an IPE when the final decision on acceptance or denial could be many months away. CARB must consider ways to reduce the time it takes to complete a review or shorten the overall process.
- (8) PCPC and its members are committed to working with CARB to determine the optimum requirements and process for obtaining an IPE which will give consumers an aerosol product which has significantly lower greenhouse gas potential yet still meets the OFP requirements of the 2023 and 2031 regulations.

Product Label Definition/Web Based Claims

PCPC agrees with CARB's conclusion that it should no longer consider updating the definition of "label" and "labelled" for the 2023 and 2031 rulemaking. PCPC will continue to actively engage with CARB as it revisits this subject for future rulemakings.

CONCLUSION

The modified proposals made by CARB on November 10, 2020 represent significant and continued progress toward reducing the ability of consumer products to form ground level ozone. PCPC and its members appreciate the efforts that CARB staff have shown for working with all stakeholders to ensure that the regulations are based on valid technical and commercial information. The personal care industry continues to be committed to working closely with CARB staff to achieve the optimum results.

Sincerely,



Thomas F. Myers
EVP-Legal & General Counsel

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Cc: Ravi Ramalingam, CARB (Ravi.Ramalingam@arb.ca.gov)
Josh Berghouse, CARB (josh.berghouse@arb.ca.gov)
Dr. Jack Linard, Linard Advisors, LLC (drjelinard@gmail.com)

APPENDIX 1: Slide 7, CARB Webinar November 10, 2020

Revised Proposal Summary

Category	Existing Standard	Proposed Standard ²	VOC Reductions (tpd)				
			2023 Reductions		Proposed Standard ³	2031 Reductions	
			CA	SCAB		CA	SCAB
Manual Aerosol Air Freshener ¹	20% or 30%	10%	1.07	0.45	5%	1.73	0.72
Hair Finishing Spray	55%	50%	0.94	0.39	50%	1.11	0.45
No Rinse Shampoo	NA	55%	0.58	0.24	50%	0.81	0.32
Hair Shine	55%	55%	NA	NA	50%	0.01	0.00
Temporary Hair Color	55%	55%	NA	NA	50%	0.02	0.01
Personal Fragrance Products (fragrance threshold = 7% in 2023, 10% in 2031)	75%	70%	0.41	0.17	50% ⁴	5.05	2.07
Aerosol Crawling Bug Insecticide	15%	15%	NA	NA	8%	0.81	0.34
2% Fragrance Exemption	2% of product mass exempted	NA	NA	NA	Sunset Exemption	0.30	0.12
		Total	3.00	1.24		9.84	4.03

1 – ‘Concentrated Aerosol Air Freshener’ and ‘Total Release Air Freshener’ subject to standards described on slide 8.

2 – Proposed standards apply January 1, 2023.

3 – Proposed standards apply between January 1, 2027 and January 1, 2031, depending upon category.
 Emission reductions for 2031.

4 – Includes technology assessment in 2026-27.

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